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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

STANLEY R. SLUDIKOFF et al.,

Plaintiffs and Appellants,

v.

ASAD AMROLLAHIFAR,

Defendant and Respondent.

B172574

(Los Angeles County
Super. Ct. No. BC207640)

APPEAL from a judgment of the Superior Court of Los Angeles County. Fumiko Wasserman, Judge. Reversed and remanded.

Law Offices of Scott J. Nord and Scott J. Nord for Plaintiffs and Appellants.

Herbert Davis, P.C. and Herbert Davis for Defendant and Respondent.

* * * * *

Plaintiffs and appellants Stanley and Ann Sludikoff appeal the judgment in favor of defendant and respondent Asad Amrollahifar after a court trial on stipulated facts in their action to foreclose a lien on real property. The lien was based on an abstract of judgment the Sludikoffs had filed against Carlos Mariano in 1993. After the abstract was recorded, Mariano acquired title to the subject property from Amrollahifar through foreclosure of a deed of trust. But in subsequent legal proceedings instituted by Amrollahifar against Mariano, and to which the Sludikoffs were not parties, the deed of trust was declared void *ab initio*, the property was reconveyed to Amrollahifar, and all liens on the property were canceled.

In the instant action, appellants sought enforcement of the lien on the grounds that the order affecting title to the property in the Amrollahifar-Mariano action was not binding on them because they were indispensable parties to that action and had not been joined. Because we agree with appellants that the prior order affecting title to the property is not binding on them, we reverse the judgment in favor of respondent and remand for further proceedings.

FACTS

The trial proceeded on the following stipulated facts:

In September 1992, Amrollahifar owned property in Los Angeles. He executed a deed of trust in favor of Mariano to secure a loan.

On January 8, 1993, the Sludikoffs recorded in Los Angeles County an abstract of judgment for a \$50,000 judgment they had obtained against Mariano in November 1992.

Mariano declared a default on the Amrollahifar obligation and instituted foreclosure proceedings on the deed of trust. On September 1, 1993, substituting himself as trustee, Mariano recorded a trustee's deed conveying the property to himself.

On September 22, 1993, Amrollahifar sued Mariano to quiet title to the property, alleging that the foreclosure was fraudulently conducted and did not comply with statutory notice requirements. The Sludikoffs were not aware of the lawsuit and

Amrollahifar was not aware of the Sludikoff judgment against Mariano. In January 1995, that lawsuit was settled before Judge Reginald Dunn, who retained jurisdiction to enforce the settlement. In settlement, Mariano executed and delivered a grant deed conveying the property to Amrollahifar, which included the following statement: “This conveyance is made to rescind and cancel that certain Trustees Deed recorded on September 1, 1993 . . . and to return the property to the trustor. This conveyance confirms title to the grantee who continues to hold the same interest acquired on August 18, 1989, as instrument number 89-1329564” This deed was recorded on February 24, 1995.

In March 1999, the Sludikoffs filed the instant action against Amrollahifar seeking foreclosure of their January 8, 1993 judgment lien against the subject property, which was then in his name.

In August 2002, Amrollahifar filed a motion before Judge Dunn seeking enforcement of the settlement agreement in his case against Mariano. In September 2002, the motion was granted by Judge Dunn, who found that Amrollahifar had been the owner of the property at all times since he acquired the property on August 18, 1989, and that Mariano, and anyone claiming an interest through Mariano, had no ownership interest in the property. The court ordered cancellation of certain documents, declaring them void *ab initio*: the original deed of trust recorded in September 1992 by Amrollahifar as trustor and designating Mariano as beneficiary; the trustee’s deed recorded September 1, 1993; and the grant deed from Mariano to Amrollahifar recorded February 24, 1995. The court also ordered that “[a]ny and all subsequent deeds or liens acquiring title or any lien interest from the defendant Carlos Mariano or his successors or assigns affecting the property are cancelled and are of no force or effect.”

The Sludikoffs had no notice of the motion and were not parties to the action between Amrollahifar and Mariano. Nevertheless, on October 24, 2002, they made a motion in those proceedings to set aside Judge Dunn’s September 2002 order. That motion was denied. The parties also stipulated that in the event the Sludikoffs prevailed in their action against Amrollahifar, at the time the Sludikoffs obtained a writ of execution, Amrollahifar would not oppose the amount and the Sludikoffs would prepare

the writ of execution subject to any proof that Amrollahifar might have that a credit was due.

On September 30, 2003, the instant Sludikoff versus Amrollahifar matter proceeded to court trial on the above factual stipulations. The court admitted into evidence the Sludikoffs' abstract of judgment and Judge Dunn's order. The court granted judgment in favor of Amrollahifar and this appeal followed.

DISCUSSION

Standard of Review

Because the issues presented in this appeal involve the application of legal principles to a set of undisputed facts, our review is de novo. (*Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal.3d 881, 888; *Dieden v. Schmidt* (2002) 104 Cal.App.4th 645, 650.)

The Judgment Must be Reversed

Appellants argue that as a result of their recorded abstract of judgment against Mariano, they were indispensable parties in Amrollahifar's action against Mariano seeking to quiet title to property in Mariano's name. They therefore assert that they are not bound by Judge Dunn's order affecting title to the property. We agree.

A. Legal Effect of Recording an Abstract of Judgment

The recording of an abstract of a money judgment with the county recorder creates a judgment lien on real property. (Code Civ. Proc., § 697.310, subd. (a).)¹ "A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are

¹ Unless otherwise designated, all statutory references are to the Code of Civil Procedure.

subject to enforcement of the money judgment against the judgment debtor . . . at the time the lien was created . . .” (§ 697.340, subd. (a); *Casey v. Gray* (1993) 13 Cal.App.4th 611, 614.) “If any interest in real property in the county on which a judgment lien could be created . . . is acquired after the judgment lien was created, the judgment lien attaches to such interest at the time it is acquired.” (§ 697.340, subd. (b).) Upon the lien’s attachment to real property, the judgment creditor becomes a secured creditor and the lien can be extinguished only by the recording of an acknowledgment of satisfaction of the underlying judgment or by the judgment creditor’s release of the lien. (§§ 697.310, subd. (b), 697.400, subds. (a), (c); *Federal Deposit Ins. Corp. v. Charlton* (1993) 17 Cal.App.4th 1066, 1070.) There is no statutory procedure for “expunging” an abstract of judgment. (*Federal Deposit, supra*, at p. 1070.) When real property encumbered by a duly recorded abstract of judgment is transferred, the transferees are charged with constructive knowledge of the encumbrance and they take title to the property subject to the lien created by the abstract, not as bona fide purchasers. (§ 697.390, subd. (a); *Federal Deposit, supra*, 17 Cal.App.4th at p. 1070.)

B. Appellants Were Indispensable Parties in the Amrollahifar-Mariano Action

Section 389, subdivision (a) defines who is an indispensable party to a lawsuit: “A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.” “A person is an indispensable party when the judgment to

be rendered necessarily must affect his rights.” (*Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 262.)

In a quiet title action, the plaintiff “shall name as defendants in the action the persons having adverse claims to the title of the plaintiff against which a determination is sought.” (§ 762.010.) More specifically, the plaintiff “shall name as defendants the persons having adverse claims that are of record or known to the plaintiff or reasonably apparent from an inspection of the property.” (§ 762.060, subd. (b).)

The parties stipulated that appellants recorded an abstract of judgment against Mariano on January 8, 1993. Approximately nine months later, on September 1, 1993, Mariano recorded a trustee’s deed pursuant to which he took title to the subject property. By virtue of the recorded abstract of judgment, the property became subject to appellants’ judgment lien at the time Mariano took title to it. Three weeks after Mariano acquired title, Amrollahifar filed a lawsuit against Mariano seeking to quiet title in the property that was then in Mariano’s name. The Sludikoffs were not named as party defendants to that suit. But the Sludikoffs’ recorded abstract of judgment imposed a lien on the property by operation of law and therefore created an interest in the property that was adverse to Amrollahifar’s title. Appellants’ absence from Amrollahifar’s lawsuit against Mariano impeded their ability to protect that interest. Nowhere is this more evident than Judge Dunn’s order, which not only canceled Mariano’s trustee’s deed, but canceled all liens on the property, including appellants’.

Amrollahifar argues that appellants were not indispensable parties in his separate lawsuit against Mariano because the issue in that action was whether the trustee’s deed was fraudulently recorded and appellants had no knowledge or evidence bearing on the issue of fraud. According to Amrollahifar, appellants’ participation in that lawsuit would have been limited to sitting in court and simply listening to the evidence presented. But the test for whether a party is indispensable to an action is not whether he has any evidence to present. That would only determine whether the party qualified as a witness. Rather, the test for determining indispensable party status is whether the party has an

interest relating to the subject of the action that cannot be protected without his involvement in the action.

We conclude that appellants were indispensable parties in Amrollahifar's action against Mariano because their interest in the property, and hence in the subject of the action, could not be protected without their involvement in the action.

C. Appellants Are Not Bound By Judge Dunn's Order in the Amrollahifar-Mariano Action

Appellants contend that Judge Dunn lacked jurisdiction to amend the settlement agreement and had no authority to extinguish their lien. As such, they argue that Judge Dunn's order was void and the trial court was not bound by Judge Dunn's order in ruling on their rights. Judge Dunn's order is not before us on appeal. In any event, in light of our conclusion that appellants were indispensable parties to Amrollahifar's quiet title action who were not joined in that action, appellants are not bound by Judge Dunn's order to the extent that the order purports to extinguish any lien rights they may have had based on their recorded abstract of judgment.² A court has no jurisdiction of an absent indispensable party and its judgment cannot bind him. (*Strauss v. Summerhays* (1984) 157 Cal.App.3d 806, 814.) Furthermore, a judgment obtained without any notice to the affected party is constitutionally invalid because it was obtained in violation of "the most rudimentary demands of due process." (*Hochstein v. Romero* (1990) 219 Cal.App.3d 447, 450, fn. 2.)

² It has not escaped our notice that Judge Dunn's order, which appears to have been prepared by Amrollahifar's present counsel, was obtained three years after Amrollahifar filed his answer in the instant action and long after appellants and Amrollahifar had been litigating the validity of the lien, including Amrollahifar's motion for summary judgment. Yet, appellants were not given any notice that Amrollahifar was seeking to obtain an order in the Amrollahifar-Mariano lawsuit purporting to extinguish that very lien.

D. The Matter Must Be Remanded

Although the trial court did not provide a statement of decision or otherwise explain the basis for its ruling, from a careful review of the evidence at trial, it is clear to us that the trial court could not have ruled as it did without having relied on Judge Dunn's order.³ There was no evidentiary basis for finding appellants' lien unenforceable in the absence of Judge Dunn's order, which declared the trustee's deed void *ab initio* and purported to extinguish the lien.

Amrollahifar argues that Mariano never acquired an ownership interest in the property because the trustee's deed by which Mariano took title to the property in the first place was obtained by fraud and therefore was not valid. According to Amrollahifar, Judge Dunn ruled that the deed was void *ab initio* because it was fraudulent. Amrollahifar argues that a void deed passes no title and therefore appellants' abstract of judgment never attached to the property. Contrary to respondent's assertion, no finding of fraud was made by Judge Dunn. Nor did the parties here stipulate at trial that any such finding was made. But even if Judge Dunn had made such a finding, appellants' rights would have been adjudicated in a proceeding in which they were absent indispensable parties. Any such finding could have no binding effect on appellants.

The judgment must therefore be reversed and the cause remanded for a determination of those rights. By remanding this case, we express no opinion as to whether the trustee's deed was fraudulently obtained, or whether that deed was void or merely voidable, or as to the continuing validity of appellants' lien, who would be indispensable parties to such a determination, or what, if any, defenses might be available to respondent. Those are issues which must be determined by the trial judge unencumbered by any findings in Judge Dunn's order that affect appellants' lien rights.

³ Counsel for respondent and appellants both agreed at oral argument that the trial judge relied on the binding effect of Judge Dunn's order in rendering judgment in favor of respondent.

DISPOSITION

The judgment is reversed and the matter remanded for proceedings in accordance with this opinion. Appellants to recover their costs on appeal.

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_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST